In the High Court of Punjab and Haryana at Chandigarh

FAO No. 3301 o 2005
Date of decision:11-12-2006

Smt. Anita Teneja and others .....Appellants

Versus

Santosh Pandey and others .....Respondents

CORAM: Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr. Naveen Chopra, Advocate, for the appellants.

VINOD K.SHARMA,J.(ORAL)

This is an appeal against the award passed by the Motor Accident Claim Tribunal Fast Track Court, Karnaal (for short the 'Tribunal') dated 28-02-2005 dismissing the claim petition filed by the claimant-appellants under Section 166 of the Motor Vehicles Act.

The facts leading to the filing of the present claim petition are that on 24-6-20000 the deceased Ashish Teneja was on tour for the sale promotion of the company – M/S Berry Udyog Pvt. Ltd., Karnal, while being stationed at Reeva. On the said date, the deceased started from Reeva and was going to Sidhi in bus bearing registration No.CIE-63 and when it covered about 10 Kms. prior to Sidhi, the driver of the bus respondent No.1– Santosh Pandey,who was driving it in a rash and

negligent manner and at a very high speed without observing the traffic rules, is alleged to have lost the control of the bus which fell in the nullah. As a result thereof, many occupants of the bus died including deceased Ashish Taneja, while other persons received multiple injuries. The accident had taken place at about 2/2.30 p.m. and the driver of the bus was challaned by the local police for causing the accident. It was alleged that the accident had occurred due to rash and negligent driving of respondent No.1 and accordingly claimed compensation to the tune of Rs. 15 lacs along with interest. It was pleaded that an FIR dated 24-6-2000 under Sections 279/337/304-A of the Indian Penal Code was registered at Police Station, Sidhi. It was claimed that the deceased was 35 years of age at the time of the accident. However, in the FIR he was shown to be 48 years of age. It was claimed that the deceased was getting a salary of Rs. 8,000/- per month plus incentives etc.

Respondent No.3. i.e. the New India Assurance Company Ltd. contested the claim of the claimants and pleaded that the claim petition was bad for misjoinder and non-joinder of necessary parties. It was claimed that driver of the offending vehicle was not holding a valid driving licence, registration certificate, insurance policy and other relevant documents at the time of the accident. It was further claimed that the vehicle was being driven in violation of terms and conditions of insurance policy and the provisions of Motor Vehicles Act. Therefore, the Insurance Company was not liable to pay any

compensation.

Respondent No.1 in his written statement challenged the locus standi of the claimants to file and maintain the present claim petition. It was claimed that the claimants had no cause of action against the answering respondent. It was pleaded that the claim petition was filed on false and frivolous grounds in order to harass the answering respondent. It was also claimed that the bus was being driven at a normal speed and all precautions were being taken which are expected from a deriver.

On the pleadings of the parties following issues were framed:-

"1. Whether the accident took place due to rash and negligent driving of Santosh Pandey of the Vehicle No. CIE 63 resulting into death of Ashish Taneja?OPP

2. Whether the claim petition is not maintainable in the present form. ? OPR

3. Whether the drive of the vehicle in question was not holding a valid and effective driving licence at the time of accident, if so, its effect. ? OPR

4. Whether the claimants are entitled to receive compensation. If so, how much and from whom ? OPP

5. Relief. "

In support of the claim, the appellant-claimant Smt. Anita Taneja, widow of the deceased, appeared in the witness box as PW-1 and also examined Kapil Mehta, Accountant of M/s Berry Udyog Pvt. Ltd., Karnal as PW-2 and Sanjay Taneja son of Shri Arjun Dev Teneja as PW-3 and also placed on record copy of report filed under Section 173 Cr. P.C. as Exhibit P-1, copy of FIR as Exhibit P-2, copy of site plan Exhibit P-3, and copy of post-mortem report as Exhibit P-4, while Exhibits P-5 and P-6 were the receipts showing the receipt of dead body. Exhibit P-7 was a photo copy of the matriculation certificate of the deceased. On the other hand, the respondents examined Mr. H. S. Saini, ESI Inspector, Panipat, as RW-1 and placed on record certificate of Insurance Company as Exhibit R-1and Insurance Policy as Exhibit R-2.

The learned Tribunal on issue No.1 came to the conclusion that there was no evidence on record to show that the accident had occurred due to rash and negligent driving of respondent No.1, whereas issues Nos. 2 and 4 were decided against the claimant-appellants in view of the findings recorded on issue No.1. However, on issue No.3, it was held that the driver of the vehicle was holding a valid and effective driving licence at the time of the accident.

Mr. Naveen Chopra, learned counsel, appearing for the claimant-appellants, has challenged the findings of the learned Tribunal on issues No.1,2 and 4 primarily on the ground that the

findings recorded by the learned Tribunal on issue No.1 is an outcome of misreading of pleadings and evidence brought on record as well as are contrary to the settled law. Learned counsel for the appellants made a reference to para 22 of the written statement by respondent No.1 where it was stated as under:-

> " That in reply to para no.22 of the claim it is stated that the accident in question did not take place due to the fault and negligence on the part of the Respondent No.1, rather it took place due to the natural calamity, the nullah has over flooded and the bank of the said river was not bounded by the railing and the respondent No.1 took all precaution, while driving the bus in question because the water was over flooded and the road was not visible and due to that reasons, the bus in question, fall into the nallah. The respondent No.1 took all the precautions while driving the bus in question as he was driving the same at a very low speed."

Learned counsel for the appellants, therefore, submits that the factum of accident was duly admitted in the written statement by respondent No.1 and, therefor, there was no question of producing an eye witness in support of the accident. Learned Counsel for the appellants placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Basti Kasim Saheb (Dead) by L.Rs Vs. The Mysore State Road Transport Corporation and others, AIR 1991 SC 487,** wherein it

has been held as under:-

> " In the instant case the part of the statement of the driver of the motor vehicle causing accident in the cross-examination supports the claimants evidence as proving rash and negligent conduct on the part of the driver. The evidence in the case indicates that there was no traffic on the road at the time of the accident. No untoward incident took place like sudden failure of the brakes or an unexpected stray cattle coming in front of the bus and still vehicle got into trouble. In absence of any unexpected development, it was for the driver to have explained how this happened and there is no such explanation forthcoming. In such a situation, the principle of res ipsa loquitur applied. The claimant, in the circumstances, could not have proved the actual cause of the accident, and on the face of it was no improbable that such an accident could have happened without the negligence of the driver, therefore, the Court should presume such negligence without further evidence. The burden in such a situation is on the defendant to show that the driver was not negligent and that the accident might, more probably, have happened in a manner which did not connote negligence on his part, but the defence has failed to produce any evidence to support such a possibility.

Therefore, it could be said that the accident took place on account of rash and negligent act of driver and the claimant would be entitled to compensation."

The learned counsel for the appellants also placed reliance on the judgment of the Hon'ble Karnataka High Court in the case of **H.V. Narayana Rao Vs. A.R. Ravi and others, 2004 ACJ 271** which is to the same effect.

I agree with the contention raised by the learned counsel for the appellants that the factum of accident which was admitted and the circumstances in which it had occurred, leave no manner of doubt, then presumption has to be drawn that the accident had occurred due to rash and negligent driving of vehicle No. CIE 63 by its driver Santosh Pandey which resulted into the death of Ashish Taneja. In view of the reversal of findings on issue No.1, the findings recorded by the learned Tribunal on issue Nos.2 and 4 also cannot be sustained.

The evidence produced on record shows that the deceased was 36 years of age at the time of the accident as is clear from the matriculation certificate of the deceased produced on record as Exhibit P-7. It has also been proved that the deceased was getting a monthly salary of Rs. 8,000/- plus incentives. However, no evidence was brought on record qua incentives. Therefore, it has to be taken that the deceased was drawing a salary of Rs. 8,000/-. Out of this income, the deceased must have spent Rs. 2,000/- on his personal needs and accordingly, the dependency of the claimants is assessed at Rs. 6,000/-

per month. Since the deceased was 36 years of age, the multiplier of16 would be just and appropriate for assessment of compensation payable to him. Accordingly, the compensation payable to the claimants is assessed at Rs.11,52,000/- (Rs.Eleven lacs fifty two thousands).

It may further be noticed that the learned Tribunal had placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Western Indian Plywood Ltd. Vs. Ashokan, 1977 ACJ1281** to come to the conclusion that claiming of compensation received under the ESI was no bar against the 3rd party. However, the law laid down in this judgment was not followed in view of the findings recorded on issue No.1. Even the Division Bench of this Court in the case of **Sunita Rani and others Vs. Hardev Singh and others, AIR 1995 P&H 300** has been pleased to hold that the compensation received by the dependents of the deceased on account of Group Insurance Scheme cannot be treated to be a substitute for compensation for the tortuous act committed by the tortfeaser. Nor the grant of special pensionary benefits can be deducted. Paras 5 and 6 of the judgment reads as under:-

> "5. In our considered view the mere fact that the sufferer starts earning by the dint of his or her own efforts, would not absolve the tort feaser of his liability to reimburse the claimants for the loss caused, by way of compensation. It is unimaginable for social welfare legislation like the one

in hand vide which the Legislature has provided for the liability to pay compensation and impliedly provided for the calculation of the same and specifically provided that the first compensation has to be assessed under Section 140 of the Act, and if the claimants are entitled to any other compensation, in that eventuality the compensation under Section 140 is to be assessed and paid and it is only if the compensation under other provision is higher that the difference between the two shall be paid in addition to the granted under Section 140. The learned Tribunal probably oblivious of statutory provisions of Sections 140 and 141 has deducted compensation Rs 1,00000/- which the petitioner got on account of the Group Insurance Scheme which by no stretch of imagination can be termed as substitute for the compensation for the tortuous act committed by the tortfeaser. Neither grant of special pensionary benefit would be a substitute for compensation nor the additional benefit could be deducted from the just compensation payable under the statute (Section 140 read with Section 141 of the Act), which categorically debars making of any deduction on account of such payment from the compensation awarded under the Motor Vehicles Act. Giving of service on compassionate ground is again totally an irrelevant

consideration while assessing the compensation under the Motor Vehicles Act. In our considered view the fact of starting or earning by any dependent member entitled to compensation is no ground to deprive him of the compensation for the loss caused by the delinquent or persona liable to reimburse the claimant by way of compensation. Even otherwise granting of compensation of Rs 10000/- in this era for the death of the father to minor children who are less than 6 years is not only pittance but amounts to adding injury to the sufferer in and by a judicial process. The findings of the Tribunal in my considered opinion are not only erroneous but are bereft of even reasonable plausibility and is totally in ignorance of the law settled. Reference may be made to Bhagat Singh Sohan Singh v. smt. Om Sharma (1983) 85 Punj LR 1 : (AIR 1983 Punj and Har 94) (FB), M/s Ishpal Singh Paramjit Singh v. Simla Devi, (1994) 1 ACC 63 (punj and Har) and Pallavan Transport Corporation Ltd. v. M. Murthy, 1989 ACJ 413: (AIR 1989 Mad 14).

6. Deductions on the basis of inheritance because of death or deduction for any benefits accrued to the claimants because of death or injury cannot be made on any comprehensible reasons apart from the fact that it would be giving a premium to tortfeaser for his tortuous

act. Making the deduction would be crucifying the statutory provision of Motor Vehicles Act for granting the compensation for the loss caused, to do otherwise would result in draconian rule i.e. if person gets more by inheritance or as insurance cover and compensation figure is lower that (then) it cannot be expected that the amount would be paid to tort feaser. One cannot have wooden approach particularly in a welfare legislation."

In view of what has been stated and discussed above, the appeal is allowed, the impugned award/judgment of the learned Tribunal is set aside and it is held that the claimants are entitled to a sum of Rs. 11,52,000/- (Rs. Eleven lacs fifty two thousands) as compensation on account of death of Shri Ashish Taneja. The compensation would be shared equally between all the claimants. The claimants shall also be entitled to interest @ 7.5% per annum from the date of award till realization. The liability of the respondents to pay compensation shall be joint and several.

Dec. 11, 2006 **(VINOD K.SHARMA)**
'dls' **JUDGE**